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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER
SRC 07 800 21336

Date: **SEP 18 2009**

IN RE: Petitioner: [REDACTED]
 Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The beneficiary seeks employment as a research associate at the University of North Carolina, Chapel Hill (UNC-CH). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief, witness letters, and published materials.

Part 1 of the Form I-140 petition identifies the beneficiary as the petitioner, and the director considered the beneficiary to be the petitioner. Review of the petition form, however, indicates that the beneficiary's attorney is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 8 of the electronically filed Form I-140, "Signature," includes the name, telephone number, and electronic mail address of the beneficiary's attorney, rather than the beneficiary himself. Thus, the attorney, and not the beneficiary, has taken responsibility for the content of the petition. This will not affect the adjudication of the appeal, because nothing in the regulations precludes an attorney from filing a petition on behalf of a client beneficiary. Also, the record shows that the attorney who filed the petition is the same attorney who filed the appeal. Thus, the appeal has been properly filed by the party that filed the petition.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer --

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an

alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the beneficiary qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989). Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, whose benefit to the national interest would be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an

advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The evidence submitted with the petition showed that the beneficiary wrote seven journal articles and a textbook chapter, and gave numerous conference presentations. The petitioner submitted letters from several witnesses (such as those discussed below), describing and praising the beneficiary's research of cystic fibrosis. Most of the witnesses have worked directly with the beneficiary, and the remaining witnesses have ties to institutions in Turkey or the United States where the beneficiary has worked and/or studied.

████████████████████ the beneficiary's supervisor at the time of filing, also briefly worked with the beneficiary during the latter's visit to the University of Manchester, England, a decade earlier. stated:

I was specifically recruited to the professorial position in North Carolina for my world renowned expertise in the biochemistry and biophysics of mucosal surfaces, and most specifically the lung. I have a particular interest and expertise in a family of molecules called mucins. . . . In all hypersecretory lung diseases e.g. asthma, chronic bronchitis, cystic fibrosis [CF] these molecules play a central role in morbidity and early death. . . .

[The beneficiary] and I have created the best biophysical and biochemical laboratory targeted at mucus, mucins and their role in health and disease in the lung, in the world. [The beneficiary] has played a crucial role in this work. He has established and maintained a fantastically productive mass spectrometry unit within the laboratory that the whole CF Center has benefited from. . . .

He is in the process of making discoveries on the mucins and how they get proteolytically modified upon secretion. I believe that these discoveries will have profound consequences for our understanding of the role of the mucins in Cystic Fibrosis lung disease. However this is only the beginning. His work throws light upon fundamental issues concerning mechanisms of innate immunity in the lung and he has recently discovered that airways release exosome particles that carry both micro and messenger RNA and that these particles have a marked interaction with some influenza viruses. . . .

I cannot stress enough the importance of [the beneficiary] not only to the communal efforts of the CF Center but also the strategic health interests of the United States. . . .

[The beneficiary] is the direct inheritor of the vital practical skills essential to the prosecution of my research.

████████████████████, Director of the Cystic Fibrosis/Pulmonary Research and Treatment Center at UNC-CH, stated that the petitioner "has now become an intellectual force who has discovered

a new paradigm that describes the organized structure and functions of all the mucins on the airway surface with the interacting globular proteins that, in concert, generate barrier functions. No other investigator in the world has achieved such success."

██████████ President and Chief Scientific Officer of BioMarck Pharmaceuticals, Ltd., Durham, North Carolina, stated that the beneficiary's "discoveries have helped enormously to understand the highly complex role of mucus not only in cystic fibrosis but also other lung diseases such as COPD [chronic obstructive pulmonary disease], chronic bronchitis, and asthma." ██████████ asserted that the beneficiary's "discovery of 'human tracheobronchial (HBE) exosomes' is probably the most fascinating finding pulmonary scientists have made during this decade. . . . Exosomes . . . carry in them some very essential information to allow one to develop new therapeutics to fight against the influenza virus."

██████████ now a researcher at the National Institutes of Health in Bethesda, Maryland, claimed to know the beneficiary "from his publications and presentations," although the record shows that ██████████ was on the faculty of Ankara University when the beneficiary was a student there, and both individuals later worked in pediatric medicine at Hacettepe University at the same time in the late 1990s. ██████████ stated that the beneficiary "single-handedly established a state-of-art laboratory for the diseases of inborn errors of metabolism at Ihsan Dogramaci Children's Hospital, Ankara, Turkey, the leading institute for pediatric metabolic diseases."

On January 2, 2008, the director issued a request for evidence, instructing the petitioner to submit evidence to show that the beneficiary's prior achievements and impact justify approving the waiver. In response, the petitioner submitted a letter from ██████████, Director of International Student and Scholar Services at UNC-CH, who stated that current policy effectively prevents the university from seeking labor certifications on behalf of non-teaching staff. This explains why UNC-CH does not seek a labor certification on the beneficiary's behalf, but it does not demonstrate that a waiver of that requirement would therefore be in the national interest. If we were to accept this argument, then it would encourage employers to bypass the labor certification process simply by refusing to apply for them and then citing that policy as grounds for a waiver. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Matter of New York State Dept. of Transportation* at 223.

More persuasively, the petitioner submitted documentation of independent citation of his work, as well as new witness letters. The second group of letters represented a broader range of witnesses than the first submission. ██████████ of Stanford University stated: "There are few researchers in the field of CF research who can match [the beneficiary's] skills."

██████████ of the University of South Alabama praised the beneficiary's "extraordinary and unique abilities in the area of lung research as demonstrated by his integral role in the success of one of the premier lung research and treatment centers in the United States and world."

The director denied the petition on January 20, 2009, stating: "The evidence of record does not establish that the [beneficiary] has accomplished anything more significant than other capable members of their profession holding similar credentials and conducting similar work." The director offered general comments acknowledging the petitioner's submission of witness letters and other materials, but the decision contained no specific discussion of the merits of the petitioner's evidence.

On appeal, the petitioner submits copies of the beneficiary's latest published articles and information about the journals that published them. At issue, however, is not whether the beneficiary continues to be an active and productive researcher. The petitioner argues that the director did not give sufficient consideration to UNC-CH's refusal to apply for labor certification on the beneficiary's behalf, but we have already explained why such an argument fails to persuade.

Arguably the most significant exhibits submitted on appeal are two new letters. [REDACTED] of Vrije University, Amsterdam, states: "In my opinion [the beneficiary] is one of the world's leading experts on the biophysics and biochemistry of mucins." [REDACTED] praises one of the beneficiary's recent articles as "one of the most creative, important and influential articles I have ever seen in the mucin research area. . . . [The beneficiary] has . . . set an entirely new standard of research methodology that is tailored to mucin research."

[REDACTED] President and Chief Executive Officer of the Cystic Fibrosis Foundation, asserts that the beneficiary "is one of the 5 best mucin biochemists on the planet" (emphasis in original), and "it is imperative that we keep [the beneficiary] in the U.S." While [REDACTED] states that he is not personally acquainted with the beneficiary, he discusses the beneficiary's work in a level of detail that indicates real familiarity with the beneficiary's efforts rather than the cursory review one might expect from a "courtesy" letter.

The growing citation rate of the beneficiary's published work supports the assertions of several independent witnesses that the beneficiary stands out in his field. A number of independent witnesses have not merely pronounced the beneficiary to be among the best in his specialty, but have provided enough information to lend credence to such a claim. The beneficiary's work has clearly attracted sustained attention at the highest levels of CF research in the United States and elsewhere. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.